Asphalt Roofing Manufacturers Association

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Submitted Through EDOCKET

U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, NW
Room: B108, Mail Code: 6102T
Washington, DC 20460
Attn: E-Docket ID No. OAR-2004-0094

Re: National Emission Standards for Hazardous Air Pollutants; General Provisions, 70 Fed. Reg. 43992, Docket ID No. OAR-2004-0094

Dear Sir or Madam:

The Asphalt Roofing Manufacturers Association (ARMA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA's or the Agency's) above-referenced "notice of reconsideration of final rule, proposed amendments, and request for comment" (July 29 Proposal), which directly affects ARMA's members. ARMA is the North American trade association that represents the majority of the asphalt roofing industry's manufacturing companies and their raw material suppliers. Together these companies produce a variety of asphalt-based residential and commercial roofing systems, including asphalt shingles, roll roofing, built-up roofing systems, and modified bitumen roofing systems. Some members also process asphalt that is used in the manufacture of such shingles, roofing, and roofing systems.

The July 29 Proposal would amend the startup, shutdown, malfunction (SSM) provisions in Clean Air Act (CAA) §112 "General Provisions" (found at 40 CFR part 63, subpart A[1]). In addition, it would amend the asphalt processing and asphalt roofing manufacturing maximum achievable control technology (MACT) standard regulations codified at part 63, subpart LLLLL (the asphalt MACT standards). ARMA members must comply with these standards, which include SSM provisions. Thus, this rulemaking has a significant impact on our members.

In addition, ARMA has long been interested in these SSM provisions in the asphalt MACT standards. In our February 15, 2002 comments on the asphalt MACT proposal, we emphasized that technology is bound to fail at times, and that technology-based standards such as MACT standards must account for such inevitable failures. See February 15, 2002 comments at p. 22 (Air Docket A-95-32).

ARMA supports EPA's proposal to amend the asphalt MACT standard language to require facilities to minimize emissions rather than necessarily implement their SSM plans during a period of SSM. We believe, however, that EPA can make technical improvements to its proposed regulatory

[1] Unless otherwise specified, all regulatory references in these comments are to 40 CFR.

amendments language. In addition, while a facility's compliance with a hastily-draft, poor SSM plan should not provide a "safe harbor" from a noncompliance finding, EPA can clarify that the carrying out of an SSM plan written in good faith would provide such a safe harbor. Finally, we concur with EPA that the CAA does not require, and EPA's rules should not mandate, that EPA or a permitting authority obtain an SSM plan from a facility upon the request of a member of the public. We explain our positions below.

Requirements During an SSM Event

EPA is correct in stating that "[e]stablishing the specific procedures in SSM plans as applicable requirements may unnecessarily constrain a source during a period where unanticipated events call for maximum flexibility" (p. 44393, col. 3). As the July 29 proposal points out, the appropriate requirement during a period of SSM is a general duty to minimize emissions consistent with safety and good air pollution control practices (*id*. at col. 2). Thus, EPA is right to say that the elements of an SSM plan are not "applicable requirements" and therefore a decision not to implement the plan during an SSM event does not by itself amount to a CAA violation.

Although ARMA agrees with EPA's intent in proposing the rule changes, we offer improvements to the actual language for amending the relevant provisions of the subpart LLLLL regulations (and similarly-worded proposed language for amending other MACT rules). Currently, §63.8691(c) requires that a facility operate in according with the SSM plan during a period, and subsection (d) states that during an SSM event a facility will not be in violation of the asphalt MACT standards even though it exceeds an emissions limit, as long as it operates in accordance with the SSM plan. The July 29 Proposal appropriately would delete subsection (c), and in subsection (d) would replace the requirement to operate in accordance with the SSM plan with a requirement to operate in accordance with the section of the part 63 General Provisions that requires facilities to minimize emissions consistent with safety and good air pollution control practices.

The proposed regulatory reference to the General Provisions is too broad, however; the proposed provisions would require the facility to "operat[e] in accordance with §63.6(e)." See proposed provisions at p. 44008, col. 3. While the discussion in the preamble clearly indicates that EPA is contemplating only a following of the "general duty" to minimize emissions consistent with safety and good air pollution control practices, §63.6(e) in fact contains other requirements as well. For example, §63.6(e)(1)(iii) describes other operation and maintenance requirements, and §63.6(e)(3) requires the development of an SSM plan. EPA should replace the overly broad reference to the entire paragraph of §63.6(e) (reference found in §63.8691(d)) with a more tailored references to §63.6(e)(1) (i) and (ii). It is §63.6(e)(1)(i) and (ii) that contain the general duty to minimize emissions consistent with safety and good air pollution control practices.

In addition, the proposed amendment to §63.8685(c) of the asphalt MACT standards would eliminate the words "and implement" from the subsection. As a result, facilities would need to "develop" a written SSM plan according to the provisions of §63.6(e)(3), rather than "develop and implement" such a plan. July 29 Proposal at 44008, col. 3. We support this change for the reasons described in the preceding paragraphs..

Effect of Complying With an SSM Plan

The July 29 Proposal states that following the SSM plan during an SSM event "is no 'safe harbor' for sources if the plan is found to be deficient. That is, a source could not use 'following the plan' as a defense for an inadequate program to minimize emissions" (p. 43994, col. 1). We agree that following an obviously faulty SSM plan cannot serve as a "shield" from enforcement. But while (as described in the preceding section), it is not appropriate to require compliance with an SSM plan, following such a plan *should* provide a safe harbor *if* it is not obviously deficient. In other words, a plan designed and

written in good faith after careful consideration serves as a useful guide for the facility, and for enforcement purposes EPA and state agencies should not engage in post-hoc analysis of whether the plan covered every conceivable event adequately. If the intent of a reasonable plan was to minimize emissions during an SSM event, and the facility followed the plan, then no enforcement action should be brought even if emissions were not in fact minimized. The appropriate remedy in this case would be to have the facility amend its SSM plan to address the newly-discovered circumstances.

Availability of SSM Plans

We agree with EPA's conclusion that "the CAA does not require EPA or a permitting authority to obtain SSM plans at the request of the public. Nor does the CAA provide EPA with authority to impose such a requirement on permitting authorities" (p. 43995, col. 1).

In addition, such a requirement would amount to bad policy. SSM plans of asphalt roofing manufacturers describe the internal operations of plants that must compete in the marketplace. As result, the plans may contain confidential and sensitive information. Even if the CAA provided authority to give a member of the public the right to obtain an SSM plan, providing such a right would allow companies to obtain sensitive information from their competitors. To protect themselves from this type of unacceptable outcome, many facilities no doubt would write overly vague SSM plans and omit critical information. That, in turn, would make the SSM plans much less useful to plant personnel, and the result could be poorer engineering and environmental performance during an SSM event. It would make no sense to write the rules in a way that could lead to this result. ARMA therefore supports EPA's proposal to remove the provision in §63.6(e)(3)(v) that requires a permitting authority to obtain an SSM plan under certain conditions.

Again, we appreciate the opportunity to file the comments. If you have any questions, please feel free to call me at (202) 207-1112.

Regards,

Russell K. Snyder
Executive Vice President

cc: Rick Colyer, OAQPS